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ALBUQUERQUE JOURNAL

An impediment to employment



Joseph Martinez, who works in the wood shop at Fathers Building Futures, makes a jig that will be used in the construction of caskets. The wood shop makes a variety of products and provides job training for formerly incarcerated men. (Marla Brose/Albuquerque Journal)

By Rick Nathanson / Journal Staff Writer

Published: Monday, August 24th, 2015 at 12:02am
Updated: Monday, August 24th, 2015 at 4:42pm

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Frank Dominguez, 54, has spent nearly half of his life in and out of prisons for various drug-related offenses.

A native of Carlsbad, he had little luck finding a job.

“When you live in a small town, everybody knows everybody, and people don’t want to hire you because they think you’re the same and are never going to change,” he said.

But he says he has changed. He moved to Albuquerque two years ago because it’s a larger community with fewer people who know him and more opportunities for jobs. Or so he thought.

Dominguez successfully finished his parole and a stint at a halfway house, and he got what was supposed to be a temporary job at Fathers Building Futures, an initiative of PB&J Family Services, which provides job training, job placement, and life and parenting skills to formerly incarcerated men.

From Dominguez's point of view, part of the problem for him and other ex-cons is that private sector job applications nearly always have a box to check if the applicant ever has been arrested and convicted of a felony or has been incarcerated. Checking that box often means the application will be dismissed outright.

That's why a "ban the box" campaign has been gaining momentum nationally in recent years.

In New Mexico, a bill to eliminate the question from private job applications drew bipartisan support in the New Mexico Legislature earlier this year, but ultimately failed.

Under that bill, which passed the Senate but died in the House, prospective private sector employers would not have been prohibited from asking an applicant about his or her prior criminal record – they just wouldn't have been able to do it on the initial application or contact.

State law already precludes asking about a person's criminal background on an initial application for a public sector job. Seventeen other states also ban the question for public sector jobs, according to the New York City-based National Employment Law Project, which advocates for policies to expand access to work. Seven of those states also have adopted laws to remove the criminal history question on job applications for private employers.

Minda McGonagle, state director for the National Federation of Independent Business, said the organization's membership of about 2,000 businesses, most of which have 50 or fewer employees, opposed the bill because of what they saw as yet "another layer of government regulation."

Their opposition was not about "hiring people who have had trouble in the past or have a conviction or have made a mistake," she said. Rather, "it's about the mandate and being told what to do and how to do it."



Alph Cervantes cleans and polishes a pickup truck in the vehicle detailing shop at Fathers Building Futures, which provides job training in a number of different businesses for formerly incarcerated men. "We want to become vital parts of our community," Cervantes said. "We all make mistakes. Just give us a try."

Further, the NFIB had concerns that some of the "language" of Senate Bill 583 could have led to "litigation on multiple fronts, such as employers being sued by applicants who don't get hired, or by a customer if something goes wrong and it involved an employee with a criminal history," McGonagle said.

"If a member business thinks it's important to ask the question on an initial application," she said, "they should have that choice – and, to be clear, not all our members think it's important and many of them don't ask."

Brian Fletcher, owner and president of Footprints Home Care Inc., said his business specializes in placing licensed nursing care professionals and nonmedical caregivers into homes to help care for people who are medically fragile – infants through seniors. He is disinclined to hire people with criminal backgrounds.

"There could be major liability issues if you hire someone with a felony and later that worker causes a problem for

someone in their care,” he said.

The job applications for his business do ask the question about prior criminal background. In addition, his business subscribes to the Caregiver Criminal History Screening program, so all applicants must go through a background check, which costs Fletcher about \$100 per applicant.

“You can see why a small business would want to find out about a felony prior to spending the \$100 on the background check,” Fletcher said. “For me, the question is, can you afford to run a background check on somebody who is not going to pass anyway, just to find something that could have been discovered on the initial application?”

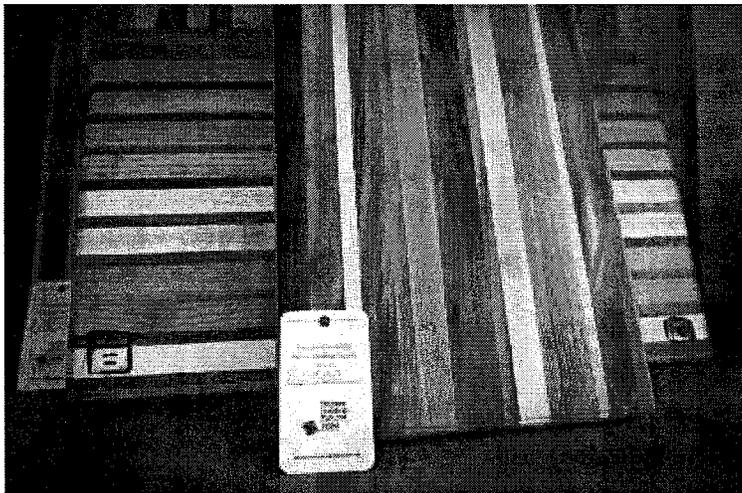
He also objects to the ban-the-box initiative because small-business owners have “their own industry issues and standards, so a blanket regulation that says you can’t ask about felonies on a job application makes it harder for the owners to do the right thing for their particular business,” he said.

Judy Chiang, a co-owner of Rising Star Chinese restaurant in Albuquerque, said job applications to her business do not ask about an applicant’s criminal history.

“If someone is out of prison and has done their time, they should be given the chance to work,” she said. “We have had experiences with people who were never in trouble with the law, but were bad employees and dishonest. You don’t find that out until they are onboard and working.”

‘Want to be straight’

Many people with felony convictions have found out that not answering truthfully on an application has consequences.



Employees who work in the wood shop at Fathers Building Futures, an economic development incentive of PB&J Family Services, learn job and life skills that later help them obtain full-time employment.

“I always check ‘yes’ on the forms because I don’t want to get a job and then have them find out about my background and fire me for not putting it down on the application,” said Dominguez. “I want to be straight with everybody and live a true life, but that means I probably won’t get hired. Most people don’t come right out and say we can’t hire you because you’re a felon, instead they just don’t call me back.”

Complicating the matter for Dominguez is that he can’t read or write well. He is rectifying that with ongoing tutoring, but the issue of being saddled with the “ex-con” label has proved far more difficult to overcome.

He has been rejected for jobs as a laborer unloading trucks, doing nighttime janitorial work, even holding a sign on road construction sites to help direct traffic. In the meantime, he remains at Fathers Building Futures, working in the wood shop and earning \$9.60 an hour.

Emet Ma’ayan, director of the program, said there are at any given time about 45 people working in the various on-site job training businesses, which include auto detailing, mobile power washing, custom woodworking, and driving freight and delivery trucks.

The men are supposed to remain in the program for 7½ months, “but about half wind up staying longer,” she said.

Ma’ayan said program supervisors try to meet potential employers and introduce them to the men. The program has offered to pay the first few weeks of employment for some, giving the new employer time to see the worker in action.

What is really needed, Ma’ayan said, is a larger pool of employers willing to give men and women who have been incarcerated a fair chance when applying for a job.

In the meantime, Dominguez is once again facing unemployment, as his job at Fathers Building Futures ends shortly. Without an income, he may no longer be able to afford the room he rents at an extended-stay motel and could become homeless.

Legislative push

Last year, the Legislative Subcommittee for Criminal Justice Reform was created and Sen. Bill O’Neill, D-Albuquerque, immediately began talking about the difficulties that formerly incarcerated people face trying to find jobs, housing and related issues.

As a former executive director of Dismas House, which provides services and programs for adults re-entering the community after incarceration, O’Neill is all too familiar with the scenario.

“I used to go with our folks as they were trying to get jobs and the question about criminal background would regularly come up on initial job applications,” he said. “I would tell my residents not to answer the question and instead write ‘will explain at interview.’”

Sometimes it worked and they would go further in the application process, O’Neill said, but more often the process just stopped.

“Parolees fear they won’t be taken seriously and, once they check the box, they’ll end up in the reject pile and won’t get the job,” he said. “You can imagine how discouraging that is and how that box becomes your enemy.”

O’Neill, along with Rep. Alonzo Baldonado, R-Los Lunas, sponsored Senate Bill 583, which was intended to extend the provisions of the Criminal Offender Employment Act of 1978 to include private employers.

Known generally as the “ban-the-box bill,” it passed the full Senate on a 22-20 vote. It also passed the House Business and Enterprise Committee, but died in the House Judiciary Committee.

Business opposition

Small businesses feared the bill prohibited them from finding out about an applicant’s criminal background and that it stripped away the employer’s discretion with respect to hiring and firing, O’Neill said. They also were uneasy about potential liability issues.

“Many Republican legislators on that committee said they would vote for it if they had assurances from the business community that they also supported it,” he said. “That’s our challenge now.”

O’Neill and Baldonado said they hope to get the bill on the call for the next session. In the meantime, they will continue to respond to questions and concerns from private sector employers and attempt to convince them that people with felony convictions deserve a second chance.

The reality is not so uplifting. The recidivism rate for people who served time in New Mexico prisons is about 46 percent after three years, said Alex Tomlin, spokeswoman for the New Mexico Corrections Department. There are currently more than 18,000 people on probation and parole, and more than 7,000 in state prisons – most of whom will get out and require jobs.

“The two greatest factors in keeping an offender from returning to prison,” she said, “is connection to family and access to a job.”

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